Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 76-275

In the Supreme Court of the United States

OCTOBER TERM, 1976

BAND-AGE, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ROBERT H. BORK,
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National Labor Relations Board,
Washington, D.C. 20570.

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The petition for a writ of certiorari in the instant case, filed on August 24, 1976, is untimely. The judgment of the court of appeals in this civil matter (Pet. App. A-43—A-44) was entered on April 13, 1976. The time for filing a petition for a writ of certiorari was not extended[1] and, accordingly, the 90-day period provided in 28 U.S.C. 2101 (c) for petitioning in civil cases expired on July 12, 1976.

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[1]Petitioner filed an untimely application for an extension of time (Pet. App. A-57), which was returned by the Clerk of this Court.

The time limit imposed by 28 U.S.C. 2101(c) is jurisdictional. *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U.S. 399, 418. Accordingly, the petition should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JOHN S. IRVING,
General Counsel,
National Labor Relations Board.

OCTOBER 1976.